

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

LESTER HERRON,)
)
Plaintiff,)
)
v.) Case No. 05-4268-CV-C-NKL
)
WILLIAM LENHART, et al.,)
)
Defendants.)
)
)

ORDER

On November 23, 2005, this Court ordered Plaintiff to file proof of service on Defendant William Lenhart (“Lenhart”) within ten days or the remaining count against Lenhart would be dismissed. On December 5, 2005, Plaintiff responded by stating that he mailed Lenhart a copy of the summons and complaint by certified mail within the forty days allowed for service by this Court’s September 23, 2005, Order. He also submitted a certified mail receipt indicating that he had mailed a copy of the summons and complaint to Defendant Christine Stallings, a defendant who was dismissed in the Court’s November 23 Order. His response does not constitute proof of service on Lenhart.

Defendant Lenhart acknowledges that Plaintiff mailed a copy of the summons and complaint to the Missouri Department of Conservation, Lenhart’s employer, in Jefferson City, Missouri. However, Lenhart works in northwest Missouri and, though he was also

served personally by the Harrison County Sheriff's Office with a copy of the complaint, he was not served with a copy of the summons. Fed. R. Civ. P. 4(c)(1) provides that: "A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed . . . and shall furnish the person effecting service with the necessary copies of the summons and complaint." Fed. R. Civ. P. 4(e) further provides that proper service may be effected (1) under the laws of the state in which the district court is located, or (2) by service in person, or by leaving copies of the summons and complaint at the defendant's residence with someone of suitable age who resides there, or with an agent registered to accept service. There is no provision in either the Federal or Missouri Rules of Civil Procedure for service by mail to the defendant's employer, and the only personal service upon Defendant Lenhart did not provide him with the summons. Plaintiff has provided no other proof of service despite the ample time this Court has given him.

Because service has not been properly effected on Defendant Lenhart, the remaining count against him is DISMISSED.

IT IS SO ORDERED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 6, 2005
Jefferson City, Missouri